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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

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2138 RAYBURN HOUSE OFFICE BUILDING

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June 12, 2006

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VIA FAX to (202) 514-4001

The Honorable Glenn A. Fine  
Inspector General  
Office of the Inspector General  
U. S. Department of Justice  
950 Pennsylvania Avenue, NW, Suite 4706  
Washington, D.C. 20530-0001

Dear Inspector General Fine:

On February 7, 2002, President George W. Bush ordered that “[t]he United States will hold states, organizations, and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law.” The purpose of this directive is to ensure that United States actions in the war on terror would not undermine our long-standing efforts to deter the torture of prisoners of war, so vital for the protection of American service personnel held as POWs.

Internal memoranda recently made public reveal that undermining deterrence against the torture of American POWs was a concern of many with respect to recommendations then being debated as to the applicability of the Geneva Conventions. The resulting Order from the President was designed to deter torture of Americans and avoid any misunderstanding about American policy toward protection of POWs. This Order is also consistent with the legal obligation of the United States in Article 131 of the Third Geneva Convention (the POW Convention), and Article 51 of the First Geneva Convention (the Wounded & Sick in the Field Convention), never to “absolve” a torturing state of “any liability” for the torture of POWs.

On April 4, 2002, 17 American POWs and 37 of their family members brought an action in federal court (*Acree v. Republic of Iraq*) to hold Iraq accountable for the horrible torture of the POWs by Iraq during the 1991 Gulf War. Following Iraq’s refusal to submit the issue to international arbitration, the POWs and their family members were awarded a substantial judgment. Subsequently, to the shock of all involved, the Justice Department began a campaign to erase the POWs’ judgment and absolve Iraq of liability.

The Honorable Glenn A. Fine  
Page Two  
June 12, 2006

As a concerned Member of Congress, I respectfully request that you review whether the actions of any individuals in the Department of Defense were counter to the earlier Presidential Order of February 7, 2002, the Treaty obligations of the United States under the POW and Wounded and Sick Conventions, and Section 552(a)(1) of the Administrative Procedure Act. Specifically, I request that you review:

- (1) Whether any person in the Department of Defense acted to encourage the Justice Department to take action to set aside Iraq's liability for the torture of the 1991 American POWs?
- (2) Whether the President has issued any order countermanding his February 7, 2002 Order, and if not, under what authority did any person act in the Department of Defense who encouraged actions excusing Iraq of its adjudicated liability for the torture of the 1991 American POWs?
- (3) Whether the President has issued any order overriding the treaty obligations of the United States never to "absolve" a torturing state of "any liability" for the torture of POWs, and if not, under what authority did any person act in the Department of Defense who encouraged actions excusing Iraq of its adjudicated liability for the torture of the 1991 American POWs?
- (4) Whether Congress specifically directed that Iraq should be excused of its liability under the Geneva Conventions, and if not, under what authority did any person act in the Department of Defense who encouraged actions excusing Iraq of its adjudicated liability for the torture of the 1991 American POWs?
- (5) Whether any Presidential order specifically directing that Iraq should be excused of its accountability for the torture of American POWs during the 1991 Gulf War, or seeking to remove the jurisdiction of the Article III court in the POWs' case, has been published in the Federal Register, as required in order to "in any manner adversely affect" the 1991 POWs' judgment under 5 U.S.C. § 552(a)(1)?
- (6) Whether it is now the policy of the President to absolve Iraq of liability for its torture of American POWs, and if not, under what authority did any person act in the Department of Defense who sought to implement such a policy through continuing actions designed to defeat the 1991 POWs' judgment?

The Honorable Glenn A. Fine  
Page Three  
June 12, 2006

Your office reflects the premium honest government places on “transparent accountability” and the rule of law. I am proud that as an American and a Member of Congress, I can expect that you will give this request the serious, independent review it deserves.

Sincerely,



John Conyers, Jr.  
Ranking Member